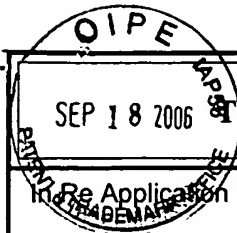


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Docket No.
3126

TRANSMITTAL OF APPEAL BRIEF (Large Entity)

Re Application Of: **LON T. SPADA and PAUL T. BUTORAC**

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
10/808,652	03/24/2004	KAUFMAN, JOSEPH A.	26822	3754	6123

Invention: **SKIRTED CLOSURE FOR SMALL DROPPER BOTTLES**

COMMISSIONER FOR PATENTS:

Transmitted herewith is the Appeal Brief in this application, with respect to the Notice of Appeal filed on:
JULY 18, 2006

The fee for filing this Appeal Brief is: **\$500.00**

- ☒ A check in the amount of the fee is enclosed.
- ☐ The Director has already been authorized to charge fees in this application to a Deposit Account.
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Signature

Dated: **SEPTEMBER 14, 2006**

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I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on SEPTEMBER 14, 2006 (Date)	
	
Signature of Person Mailing Correspondence	
WALTER A. HACKLER	
Typed or Printed Name of Person Mailing Correspondence	

cc: ..



Docket No.: 3126

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Lon T. Spada, et al.

Examiner: Kaufman, Joseph A.

Serial No.: 10/808,652

Art Unit: 3754

Filed: March 24, 2004

Title: SKIRTED CLOSURE FOR SMALL
DROPPER BOTTLES

Mail Stop APPEAL BRIEF - PATENTS
Commissioner for Patents
PO Box 1450
Alexandria, Virginia 22313-1450

BRIEF ON APPEAL

This appeal is taken from a rejection of the claim of the hereinabove referenced Patent Application in a final Office Action mailed May 5, 2006; oral hearing is waived.

REAL PARTY OF INTEREST

The present application is presently assigned to Allergan, Inc. as evidenced by an assignment recorded March 24, 2006 on reel 015144, frame 0217.

RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences on applications related to the present application.

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STATUS OF CLAIMS

Appealed Claims (Claims Appendix)

Status

1 (previously amended)

Rejected under 35 U.S.C. 112, first paragraph.

1 (previously amended)

Rejected under 35 U.S.C. 103(a) on the basis of Gerondale US 2004/0140319 A1 in view of Baudin U.S. 6,152,324.

The status of claim 1 is appealed.

STATUS OF AMENDMENTS

No amendment to the application has been made after the final rejection.

SUMMARY OF SUBJECT MATTER

Specific reference is made to, respecting, original character reference, Figure number and cite in original specification.

The present invention provides for a closure (10) Figures 1-3, page 4, line 13, for a dropper bottle (14) Figure 1, page 4, line 15. The closure (10) Figures 1-3, page 4, line 14 includes a nozzle (12) Figure 1, page 4, line 15 disposed on the bottle (14) Figure 1, page 4, line 15 having a neck (18), Figure 3, page 4, line 16 and a shoulder (20), Figure 1, page 4, line 16 having an outstanding circumferential ring (24) Figures 1 and 3, page 5, line 2, and threads (26) Figures 1 and 3, page 5, line 2 disposed between the ring (24) Figures 1 and 3, page 5, line 2 and the neck (18) Figure 3, page 4, line 16.

A concave surface 38a (Figure 3, replacement sheet) amended paragraph (10/17/05) page 5 at line 14 subtends the aperture (38) Figure 1, page 5, line 5.

A cap (30) Figure 1-3, page 5, line 5 includes a tip (32) Figures 1-3, page 5, line 5 and an axially downwardly extending skirt (34) Figures 1-3, page 5, line 6. The tip (32) Figures 1-3, page 5, line 5 includes a seat (36) Figures 2 and 3, page 5 amended paragraph (10/17/05) page 5 at line 14 including a convex surface (36a) Figure 3 (replacement sheet) amended paragraph (10/17/05) page 5 at line 14, for sealably engages the aperture (38) Figure 1, page 5, line 15.

The skirt (34) Figures 1-3, page 5, line 6 includes internal grooves (40) Figures 2 and 3, page 5, lines 16-17 for engaging the shoulder threads (26) Figures 1 and 3, page 5, line 17 and an internal circumferential lip (44) Figures 2 and 3, page 5, line 18 for sealably engaging the ring (24) Figures 1 and 3, paragraph 5, line 2.

The lip (44) Figures 2 and 3, page 5, line 18 is spaced apart from the aperture (28) Figure 1, page 5, line 6 for enabling simultaneous sealing of the aperture Figure 1, page 5, line 6 and the ring (24) Figures 1 and 3, page 5, line 2 upon rotation of the cap (30) Figures 1 and 2, page 5, line 5 onto the nozzle (12) Figure 1, page 4, line 15.

The concave surface (38a) amended paragraph (10/17/05) page 5, line 14 and the convex surface (36a) amended paragraph (10/17/05) page 5, line 14 having equal radii for enabling a sealed rotation engagement with one another without entry into the aperture (37) Figure 1, page 5, line 15.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

ENABLEMENT

The Examiner has rejected claims 1 under 35 USC 112, first paragraph as failing to comply with the novelty description requirement.

OBVIOUSNESS

The Examiner has rejected claim 1 under 35 USC 103(a) as being obvious over U.S. 2004/0140319 A1 to Gerondale in view of U.S. 6,152,324 to Baudin.

GROUPING OF CONTESTED CLAIMS

No separate consideration of claims is requested.

ARGUMENT – ENABLEMENT

Claim 1 has been rejected by the Examiner under 35 USC 112, first paragraph, as failing to comply with the written description requirement. In this rejection, the Examiner has stated that the claim contains subject matter which was not described in the specification in a way as to reasonably convey to one skilled in the relevant art that the inventors at the time the application was filed has possession of the claimed invention. Specifically, the Examiner refers to the concave surface subtending the aperture in the concave and convex surfaces having equal radii.

The Appellants submit that 35 USC 112, first paragraph, simply requires that the claims set forth and circumscribe a particular area with sufficient degree of precision and particularly which is the case here. *In re Moore*, 169 USPQ 236 (CCPA 1971).

The Appellants further submit that drawings alone may provide “written description” of invention as required by 35 USC 112, and they may be used, like written specification, to provide evidence relevant to claim interpretation, and thus claims, in proceeding before patent and trademark office, must be given their broadest reasonable interpretive consistent with the drawings as well as the specification. *In re Miskinyar*, 28 USPQ 2d 1789 (CAFC 1993); see also *In re Gay*, 135 USPQ 311 (CCPA 1962).

Accordingly, the Appellants submit that the claimed directed to concave and convex surfaces is clearly set forth in the drawings which also show that the surfaces have equal radii.

As presently claimed, this structure also enables sealed rotational engagement of the concave and convex surfaces with one another which is also evident from the drawings and accordingly part of the original disclosure. Thus, the Appellants respectfully requests reversal of this rejection.

ARGUMENT – OBVIOUSNESS

Claim 1 has been rejected by the Examiner under 35 USC 103(a) as being unpatentable over Gerondale in view of Baudin.

In this rejection, the Examiner acknowledges that Gerondale lacks the concave and convex surfaces. However, relies on Baudin to show convex and concave surfaces.

However, the Appellants submit that Baudin discloses a snap cap 8 which includes a smooth bulge 40 shaped to match the concave side of the membrane 21. Clearly, because of the hinge nature of the cap, rotational sealed engagement is not possible, nor taught.

In addition, the combination of Gerondale and Baudin would not result in an operable device. Accordingly, under these circumstances, a combination of the references is improper. *Ex parte* Hartmann, 186 USPQ 366, 367 (PTO Board of Appeals 1974); *Ex parte* Sternau, 155 USPQ 733, 755 (PTO Board of Appeals 1967).

Accordingly, the Appellants submit that the Examiner has not made a prima facie case of obviousness with the Gerondale/Baudin combination and respectfully request the Examiner to withdraw the rejection of claim 1 under 35 USC 103(a).

In view of the arguments hereinabove set forth, it is submitted that each of the claims now in the application define patentable subject matter not anticipated by the art of record and not obvious to one skilled in this field who is aware of the references of record. Reversal of the Examiner's decision is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Walter A. Hackler', with a long horizontal line extending to the right.

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CLAIMS APPENDIX
SERIAL NO. 10/808,652

1. (Previously Presented) A closure for a dropper bottle, said closure comprising:
 - a nozzle disposed on the bottle and having a neck and a shoulder, said neck having an aperture at an end thereof for dropwise dispensing of a liquid, said shoulder having an outstanding circumferential ring and threads disposed between the ring and said neck;
 - a concave surface subtending said aperture; and
 - a cap having a top and an axially downwardly extending skirt, said top having a seat, including a convex surface, for sealably engaging said aperture, said skirt having internal grooves for engaging the shoulder threads and an internal circumferential lip for sealably engaging the ring, the lip being spaced apart from said aperture for enabling simultaneous sealing of said aperture and the ring upon rotation of said cap onto said nozzle, the concave and convex surfaces having equal radii for enabling a sealed rotational engagement with one another without entry into said aperture.

Claims 2-10 cancelled.

EVIDENCE APPENDIX

NONE

RELATED PROCEEDINGS APPENDIX

NONE